* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

August 3, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 4, 2005

Case Number: TSO-0294

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The DOE granted the individual a security clearance in March 2000 following the favorable resolution of derogatory information in an administrative review hearing. *See Personnel Security Hearing*, 27 DOE ¶ 82,825 (1999) (affirmed by OSA 2000). In June 2004, the individual informed the LSO that the police had arrested her on June 5, 2004 for Domestic Violence. *See* Exhibit (Ex.) 19. This revelation prompted the LSO to conduct a Personnel Security Interview (PSI) with the individual on December 15, 2004 (2004 PSI). After the 2004 PSI, the LSO referred the individual to a board-certified psychiatrist for a forensic mental evaluation. The board-certified psychiatrist examined the individual in April 2005, and memorialized his findings in a report (Psychiatric Report or Exhibit 13). In the Psychiatric Report, the board-certified psychiatrist opined that the individual suffers from Borderline Personality Disorder, a mental illness which, he opined, has caused a significant defect in her judgment and reliability in the past, and is likely to do so in the future.

In July 2005, the DOE initiated formal administrative review proceedings by informing the individual that the agency possessed derogatory information that created substantial doubt regarding her continued eligibility to hold a security clearance. In a Notification Letter that it

[1] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

sent to the individual, the DOE described this derogatory information and explained how that information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections f and h and l (Criteria F, H and L respectively).[2]

Upon her receipt of the Notification Letter, the individual, through her attorney, exercised her right under the Part 710 regulations and requested an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case on October 6, 2005. After scheduling a hearing within the regulatory time frame prescribed by the Part 710 regulations, Counsel for the individual filed a Motion for Partial Dismissal of the allegations contained in the Notification Letter. I delayed the hearing [3] to allow the DOE Counsel to respond to the pending motion and for me to rule on the subject motion.

In mid-January 2006, the LSO issued an Amended Notification Letter to the individual. In the Amended Notification, the LSO moved the charges that appeared under Criterion F in the original Notification Letter to Criterion L. The effect of the amendment is to reduce from three to two the number of criteria before me.[4]

One week after receiving the Amended Notification Letter, I conducted a two-day hearing in this case. The first day of the hearing lasted approximately 12 hours. The second day of the hearing spanned almost five hours.

At the two-day hearing, nine witnesses testified, some of them twice. The DOE presented the testimony of two witnesses and the individual presented her own testimony and that of six other witnesses. In addition to the testimonial evidence, the DOE submitted 55 exhibits into the record; the individual tendered 16 exhibits. I permitted both parties to file their closing statements in writing three weeks after the hearing had concluded.

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[2] Criterion F pertains to information that a person has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31." 10 C.F.R. § 710.8(f). Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment and reliability." 10 C.F.R. § 710.8(h). Criterion L relates, in relevant part, to information that a person has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . ." 10 C.F.R. § 710.8 (l).

[3] The OHA Director approved my written request to delay the administrative review hearing five weeks beyond the deadline prescribed by the Part 708 regulations.

[4] Counsel for the individual did not object to the amendment of the Notification Letter.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual's access authorization eligibility in favor of the national security. *Id.*

III. The Amended Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two potentially disqualifying criteria in its Amended Notification Letter as bases for suspending the individual's clearance, *i.e.*, Criteria H and L.

The Criterion H allegations in this case are based primarily on the 2005 opinion of a board-certified psychiatrist (hereinafter referred to as DOE consultant-psychiatrist #2) who diagnosed the individual as suffering from a Borderline Personality Disorder, a mental illness which, according to the DOE consultant-psychiatrist #2 causes, or may cause, a significant defect in the individual's judgment or reliability. The LSO also notes for historical purposes the 1998 opinion of a different board-certified psychiatrist (hereinafter referred to as DOE consultant-psychiatrist #1) who diagnosed the individual as (1) suffering from an Antisocial Personality Disorder, and (2) displaying some rather strong Borderline Personality Disorder traits. DOE consultant-

psychiatrist #1 also concluded in 1998 that the individual would meet the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, text revised (DSM-IV-TR) for Intermittent Explosive Disorder if she did not meet the criteria for Antisocial Personality Disorder. From a security perspective, certain emotional, mental, and personality conditions can impair a person's judgment, reliability, or trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, THE WHITE HOUSE.

With respect to the Criterion L allegations, the LSO cites the following 12 matters of concern:

- the individual's four arrests, one in 2004 for Battery Against a Household Member; two in 1996, one for Felony Aggravated Battery Against a Household Member with a Deadly Weapon, the other for Assault and Battery; and one in 1993 for Domestic Battery;

- five instances when the police were dispatched to the individual's residence or to another location to investigate complaints of domestic disturbances (one in 1992, one in 1994, two in 1996 and one in 1997);

- a physical fight in 1996 between the individual and her boyfriend that allegedly resulted in the boyfriend suffering a concussion after the individual kicked him as many as 20 times in the head;

- the individual's 2004 arrest for domestic violence, an incident that occurred despite the individual's assurances under oath at her first administrative review hearing in 1999 that she (1) could control her temper, and (2) would not engage in any further incidents of violence.

- the individual's resumption of an allegedly physically abusive relationship with her former boyfriend despite her testimony under oath at her first administrative review hearing in 1999 that she would avoid such a relationship in the future.

Criminal conduct as exemplified by the individual's four arrests raises security concerns about the individual's judgment, reliability, and trustworthiness and further call into question her ability or willingness to comply with laws, rules and regulations. *See Id.* at Guideline J. Regarding the five other documented instances when the law enforcement officials were called to the individual's residence or another location, there are additional questions about the individual's involvement in criminal activity regardless of whether she was formally charged, prosecuted or convicted of a crime. *Id.* Similarly, the individual's physical altercation with her boyfriend in 1996 where she allegedly inflicted serious bodily injury to him raises the specter of criminal conduct as well.

As for the individual's statements under oath upon which another Hearing Officer relied in deciding that the individual should be granted a DOE security clearance, the security concern at issue was articulated by a Personnel Security Specialist at the 2006 administrative review hearing. The Personnel Security Specialist testified that "[s]ecurity programs are based on trust, and a person is given a clearance after a determination has been made that they are honest,

reliable, trustworthy, and that they will be able to comply with . . . rules and regulations." Transcript of 2006 Hearing (Tr.) at 208. The Personnel Security Specialist pointed out that in granting the individual a security clearance, the DOE relied on the individual's statements under oath that she would not reconcile with her abusive, manipulative boyfriend and that there would be no further incidents of domestic violence. *Id.* at 209. Despite her sworn assurances, the individual did resume her relationship with her boyfriend and did get arrested for another act of violence in 2004. These facts call into question whether the individual was honest with the DOE in 1999 and whether she can be trusted again. Furthermore, there is a security concern that the individual could be susceptible to blackmail, coercion or duress by her boyfriend in view of her numerous prior statements to the LSO that her boyfriend has repeatedly tried to manipulate and control her. *Id.*

IV. Procedural History

A. The Individual's 1999 Administrative Review Hearing and Hearing Officer Brown's Opinion in Case No. VSO-0279

The only criterion at issue in the individual's first administrative review hearing (designated as Case No. VSO-0279) in 1999 was Criterion H. The Criterion H allegations were based solely on the diagnosis of DOE consultant-psychiatrist #1 who opined that the individual suffered from Antisocial Personality Disorder, a mental illness which, DOE consultant-psychiatrist #1 opined, caused, or might cause, a significant defect in the individual's judgment or reliability.[5] At the 1999 hearing, two psychologists testified on the individual's behalf. Neither supported the DOE consultant-psychiatrist's diagnosis. Instead, both opined that the individual suffered from an Impulse Control Disorder, NOS.

In his Opinion, Hearing Officer Brown rejected DOE consultant-psychiatrist #1's primary and alternate diagnoses of the individual. *See* Ex. 50. Instead, Hearing Officer Brown accorded more weight to the opinions of two psychologists (Psychologist #1 and Psychologist #2) who convinced him that the individual suffered from an Impulse Control Disorder, NOS.[6] Hearing Officer Brown also accepted Psychologist #1's view that the individual had matured into a responsible individual and had moved beyond the male relationships that had caused her difficulties in the past. Hearing Officer Brown determined, based on the combined testimony of Psychologist #1 and Psychologist #2 and his own assessment of the individual's demeanor and credibility,[7] that the individual's mental condition was residual and diminishing, to the degree

[5] DOE consultant-psychiatrist #1 also provided an alternate diagnosis for the individual, *i.e.,* Intermittent Explosive Disorder.

[6] According to the Hearing Officer Opinion, at the hearing DOE consultant-psychiatrist #1 accepted the two psychologist's diagnosis of Impulse Control Disorder for the individual. *Id.* at 11.

[7] In fact, Hearing Officer Brown questioned the individual at the hearing whether she believed there would be any further incidents of violence like the ones that had been discussed at the hearing. Ex. 51 at 260. The individual responded, "Absolutely not, no matter what." *Id.* When queried by Hearing Officer Brown why she believed there would be no further violent incidents, the individual responded, "I'm over it. I'm not putting myself even close to being near any possible kind of predicament or situation like that. . . I don't want it, I don't need it." *Id.* Hearing Officer Brown also questioned the individual whether she believed that she could control her temper in the future. *Id.* The individual responded affirmatively. *Id.*

that such mental condition was not of a nature at that time that it caused or may cause a significant defect in the individual's judgment and reliability. For this reason, Hearing Officer Brown determined that the individual had mitigated the security concerns associated with Criterion H. Accordingly, he recommended that the DOE should grant the individual an initial DOE security clearance.

B. Motion for Partial Dismissal

On October 31, 2005, Counsel for the individual filed a Motion for Partial Dismissal. In his Motion, the individual's Counsel argued that the doctrine of collateral estoppel prevented the LSO from re-litigating those allegations set forth in the original Notification Letter that were considered in the individual's prior administrative review hearing. The DOE Counsel filed a response to the subject motion on November 29, 2005 in which he submitted that the arguments advanced by Counsel for the individual in his motion were without merit. The individual's Counsel filed a reply to the DOE's response on December 13, 2005.

On December 31, 2005, I denied the subject motion on the following grounds.[8] I first stated that I had given utmost deference to national security in rendering my decision on the motion. I then pointed out that no one has a "right" to a security clearance. *See Dept. of Navy v. Egan*, 484 U.S. 518 (1988). Next, I noted that courts have held that the Due Process Clause of the Fifth Amendment has no application to a proceeding to review an employee's security clearance. *See Jones v. Dept. of Navy*, 978 F.2d 1223, 1225-26 (Fed. Cir. 1992). I then advised that in resolving a question concerning an individual's eligibility for access authorization, I am required to consider the factors enumerated in 10 C.F.R. 710.7(c). Those factors, I pointed out, include "other relevant and material factors." I concluded that a person's past conduct is an extremely important factor that must be weighed in a comprehensive, common sense determination regarding a person's eligibility for a security clearance. I then cited *The Adjudicative Guidelines set forth in Appendix B to Subpart A of 10 C.F.R. Part 710* which state, in relevant part, that the "adjudicative process is a careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." I then found that when the DOE acquires new information about one of its clearance holders, it must be free to examine that new information in relation to other information that it might have previously found to be mitigated in the clearance holder's favor. I determined that no clearance holder has a "vested right" to a previously adjudicated favorable security clearance determination, reasoning that such a determination may become obsolete by the passage of time and the development of new derogatory information. This view, I found, is supported by the "whole person" concept embodied in the Adjudicative Guidelines referred to above. In the end, I determined if the DOE were barred from re-evaluating evidence of past misconduct in light of relevant new information, there would be a chilling effect on national security. [9]

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[8] I denied the subject motion in an electronic mail transmission to the parties on the referenced date.

[9] It should be pointed out that the prior administrative review hearing did not contain an allegation under Criterion L. Hence, Hearing Officer Brown did not rule on (1) whether the individual's three arrests and five other encounters with law enforcement officials, all of which were part of the individual's personnel security file at the time of the first hearing, came within the ambit of Criterion L or, (2) whether any security concerns arising under Criterion L were mitigated.

[10] The individual claimed at the hearing that she only witnessed her father verbally abusing her mother, not physically abusing her. Tr. at 304.

V. Pending Motion to Strike

During the 2006 administrative review hearing that I conducted, Counsel for the individual requested that I strike from the hearing record portions of the cross-examination of one of the individual's expert witnesses and the subsequent argument by counsel over the relevancy of the cross-examination questions. Tr. at 205. In response to the oral motion advanced by the individual's Counsel, the DOE Counsel asserted that the information at issue is not only relevant to a determination whether the expert witness is credible or biased, but also relevant to some of the domestic abuse allegations before me.

To put the motion in context, it is useful to explain the questioning that triggered the motion. The DOE Counsel asked the individual's psychiatrist on cross examination: "Would you agree that someone can, in fact, be a perpetrator, but they're never convicted?" *Id.* at 199. Counsel for the individual objected to the question on the basis that the question called for a response beyond the expert's area of expertise. *Id.* In response, the DOE Counsel attempted to establish a foundation for the question that was the subject of the objection by querying the expert about a domestic situation in 1996 for which the expert was arrested. *Id.*

The Part 710 regulations do not specifically refer to striking material from a record. However, in the context of a civil proceeding, the purpose of striking material from a record is to exclude "redundant, immaterial, impertinent or scandalous matter" from consideration by the trier of fact. *See* Fed. R. Civ. P. 12(f). *See Lipsky v. Commonwealth United Corp*., 551 F.2d 887 (2d Cir. 1974); *See Personnel Security Review*, (Case No. VSA-0194), *http://www.oha.doe.gov/cases/security/vsa0194.htm* at 3.

I have carefully considered the matter before me and determined that there is no basis for striking the subject information from the record. As an initial matter, I find that the matter on which the expert was questioned is not redundant. Second, I find that the matter is relevant and material to the Criterion L charges. In fact, had the individual's Counsel not objected, I would have concluded that the expert was competent to answer the question based on his testimony that he has vast experience treating patients almost everyday who manifest violent, aggressive behavior. Tr. at 188. The DOE Counsel only questioned the expert about his personal perspective on the subject of domestic violence to demonstrate that the expert could respond to the question at issue as a fact witness, if not permitted to do so as an expert witness. Third, I determined that the revelation of the expert's arrest, while potentially embarrassing, is not scandalous. Finally, I find that the retention of the questioning related to the individual's expert's arrest and the arguments of Counsel related to that questioning will not prejudice the individual because I ultimately determined to accord the matter little weight in my overall analysis of this case.

For all the reasons set forth above, I am denying the pending motion. The hearing transcript will remain intact.

VI. Factual Summary

The summary of facts is based on the extensive record in this case. Where there are differing viewpoints about relevant facts, I will note them as appropriate.

The individual had a difficult childhood followed by a troubled adolescence. As an adult, the individual's relationships with her boyfriends were often volatile, turbulent, and punctuated with domestic violence.

In her early years, the individual witnessed her father abuse her mother.[10] Ex. 13 at 2. The father was arrested several times for domestic violence, and he reportedly suffered from drug addiction and alcoholism. *Id.* The individual's parents divorced when the individual was 10 years old. *Id.* Following the divorce of her parents, the individual lived with both her father and mother for different periods. *Id.* The individual reports that her mother had "fits of anger" and physically abused the individual. *Id.* The individual and her mother attended family counseling when the individual was between 10 and 12 years old. *Id.* When the individual was 14 or 15, the individual's parents called police after a fight with the individual. *Id.* To escape her family situation,[11] the individual at age 16 became involved with a man who was 20 years old (hereinafter referred to as "Boyfriend #1"). *Id.* By her own account, Boyfriend #1 had a "drug problem." Ex. 49 at 36. Sometime after she established a relationship with Boyfriend #1, the individual's mother "committed" the individual to an adolescent treatment center. Ex. 13 at 2. Within a few days, the individual convinced her mother to withdraw her from the treatment program. *Id.* The individual later dropped out of high school and became pregnant at age 18 with twins by Boyfriend #1. *Id.* The individual's twins were born in August 1992.

The relationship between Boyfriend #1 and the individual was unstable. Ex. 49 at 42. A few months after her twins were born, the individual called the police for assistance with a domestic situation. Ex. 46. After arriving, the police arrested Boyfriend #1 and charged him with domestic battery. In February 1993, both the individual and Boyfriend #1 were arrested and charged with domestic assault. Ex. 44. The individual claims that the charges against her were dropped. Tr. at 387. Boyfriend #1 received six months probation after he pled "nolo contendere" to the charges. Ex. 41. The following year, October 1994, the individual summoned the police to a local restaurant where the individual reported that Boyfriend #1 had threatened her with violence while she was at that eating establishment. Ex. 44. The following day, the individual petitioned the court for the first of several restraining orders against Boyfriend #1. Ex. 42.

Sometime in 1994, the individual met Boyfriend #2. Ex. 50 at 3. She began living with Boyfriend #2 in early 1995. *Id.* Within a year, the individual's relationship with Boyfriend #2 deteriorated to the point where the pair would have violent confrontations.

In March 1996, the individual and Boyfriend #2 got into an argument while in a vehicle that escalated into a physical fight. The individual punched Boyfriend #2 in the face and then proceeded to kick him in the head as many as 20 times. Ex. 49 at 86; Tr. at 388. Boyfriend #2 did not file any criminal charges against the individual even though he reportedly received a concussion as a result of the encounter. *Id.*

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[11] Curiously, the individual told the LSO in 1998 that she came from "a really loving, close knit kind of family." Ex. 49 at 61.

In June 1996, the police arrested the individual for assault and battery on Boyfriend #2's former girlfriend. The victim suffered a broken nose and a fractured jaw as the result of the altercation between the individual and the victim. Ex. 49 at 110-112. According to the individual, she apologized to the victim one month later and the victim dropped charges stemming from the altercation. *Id.* at 113, 119.

On one day in September 1996, the individual and Boyfriend #2 had argued all day. Ex. 38. The individual got into her vehicle and attempted to leave when Boyfriend #2 either put his hands on the hood of the car or jumped on the hood of the car. Tr. at 50-53. While there are conflicting accounts of what happened next, it appears that the individual moved the car and either slightly hit Boyfriend #2 or caused Boyfriend #2 to fall from the hood of the car. Ex. 39, Tr. at 50-53. The individual was subsequently charged with Felony Aggravated Battery Against a Household Member (Motor Vehicle). *Id.* [12] Within one week of the incident with the vehicle, the individual called the police regarding another domestic dispute with Boyfriend #2. Ex. 38.

In 1997, the individual's third child (Child #3), fathered by Boyfriend #2, was born. Ex. 36. On October 14, 1997, the individual called police to report that Boyfriend #2 had abused her and then assaulted her by slamming her head into a towel rack. Ex. 37. Two days later, the police were summoned once again to the individual's residence to investigate a report that Boyfriend #2 had threatened the individual. Ex. 36. Boyfriend #2 was arrested for domestic violence, assault on a household member, and criminal damage to property. *Id.*

The individual decided to leave Boyfriend #2 sometime in 1997 and did so in February 1998, when she and her three children moved in with her grandparents. Ex. 49 at 48, Tr. at 280.

In 1998, the individual applied for a position with a DOE contractor that required her to obtain a DOE security clearance. During a background investigation, the LSO uncovered the derogatory information that was subsequently resolved in an administrative review hearing in 1999. At the 1999 administrative review hearing, the individual convinced her two psychologists and the Hearing Officer that she had "moved beyond the male relationships that caused her difficulties in the past."[13] Ex. 51 at 12. The DOE granted the individual her initial DOE security clearance in March 2000. Ex. 2.

At the 2006 hearing, the individual revealed that Boyfriend #2 began coming to the individual's home every Thursday and Friday beginning in 2000 to assist with the care of Child #3. Tr. at 362. This arrangement lasted until 2003.[14] *Id.* In March 2004, Child #3 experienced a medical problem and the individual accepted Boyfriend #2's offer to babysit Child #3 full time so the

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[12] In February 1997, Boyfriend #2 recanted his story before the grand jury and refused to testify against the individual who was then pregnant with his child. Ex. 38. The charges were dropped but, as a result of the incident, the individual was ordered to attend a family counseling center for domestic violence.

[13] In a 1998 PSI, the individual told the Personnel Security Specialist, "I'm not gonna let them [Boyfriend #1 and Boyfriend #2] affect my life anymore." Ex. 49 at 47. She added, "I can't thank my lucky stars enough that I'm away from them all" [Boyfriends #1 and #2 and their respective families]. *Id*. at 36.

[14] In 2002, the individual reports that she and Boyfriend #2 resumed "a decent relationship." *Id.* at 287.

individual could go to work. *Id.* at 290-292. The individual and Boyfriend #2 resumed an intimate relationship and the individual became pregnant by Boyfriend #2 in April 2004. *Id.* at 292.

On June 4, 2004, the individual and Boyfriend #2 became embroiled in an altercation when he allegedly questioned the paternity of the child that she was carrying.[15] While the details of what, if anything, the individual did to Boyfriend #2 are not clear because of conflicting statements in the record, the police arrested the individual and charged her with Battery Against a Household Member (Boyfriend #2).[16] Immediately after her release from jail, the individual filed for and received a temporary restraining order against Boyfriend #2. Ex. 30. The restraining order was in effect until June 14, 2005. *Id.* In May 2005, the individual petitioned the court and asked that the temporary restraining order against Boyfriend #2 be extended beyond its June 14, 2005 expiration date. Tr. at 298. The court denied the individual's request. Sometime in June 2005, the individual became pregnant again by Boyfriend #2.

VII. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).[17] After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion H

Between 1998 and 2006, the individual has been evaluated by five mental health professionals, and has received five different diagnoses. In 1998, DOE consultant-psychiatrist #1 examined the individual and concluded that she suffered from Antisocial Personality Disorder. Ex. 17. In 1999, two different psychologists (Psychologist #1 and Psychologist #2) diagnosed the individual as suffering from Impulse Control Disorder, NOS. Ex. 16; Ex. 52 at 278-284. In 2005, DOE consultant-psychiatrist #2 diagnosed the individual as suffering from Borderline Personality Disorder. Ex. 13. In 2006, Psychologist #1 examined the individual again and decided that the individual suffered from Partner Relational Problem. Ex. C. Finally, in 2006 a

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[15] The individual suffered a miscarriage in July 2004. *Id.* at 299.

[16] In November 2004, the court dismissed the charges associated with the June 2004 arrest when Boyfriend #2 failed to appear in court. Ex. 28.

[17] Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

psychiatrist retained by the individual examined her and opined that she suffered from no psychiatric illness. Ex. N.

Whether the Individual Suffers from a Mental Condition or Illness that Causes, or May Cause a Significant Defect in Her Judgment or Reliability

The pivotal question under Criterion H is whether the individual suffers from a mental condition or illness that causes, or may cause a significant defect in her judgment or reliability. As discussed below, the experts in this case have divergent views on this subject.

1. DOE consultant-psychiatrist #2's Opinion

DOE consultant-psychiatrist #2 is board-certified and has been practicing psychiatry for 20 years. Tr. at 16. He is licensed by examination to administer and interpret the results of the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). *Id.* at 23.

Prior to his April 26, 2005 mental status examination with the individual, DOE consultant-psychiatrist #2 reviewed the individual's personnel security file. Ex. 13. He also administered the MMPI-2. *Id.* While the individual's scores on the clinical scales fell within the normal range on the MMPI-2, DOE consultant-psychiatrist #2 reported that her scores likely underestimate her problems because her "validity profile was somewhat defensive." *Id.* He also reported that the individual's MMPI-2 profile showed some personality characteristics such as pleasure seeking, impulsivity, proneness to rule infractions, and high-risk behavior, that may make her vulnerable to clashes with authority at times. *Id.*

Based on his examination with the individual and his review of the individual's personnel security file and MMPI-2 test results, DOE consultant-psychiatrist #2 diagnosed the individual as suffering from Borderline Personality Disorder. According to DOE consultant-psychiatrist #2, the individual's personality disorder arose from a very difficult childhood. *Id.* Later, as an adult, the individual has had a pervasive pattern of unstable interpersonal relationships, marked by episodes of intense anger resulting in violence and/or arrest. Specifically, over the past 11 years the individual has had five very violent episodes with three different people. The episodes have resulted in four arrests for battery and three hospitalizations of victims (a woman with a broken nose and fractured jaw, a man with numerous bites and bruises, and a second man with a concussion).

DOE consultant-psychiatrist #2 stated that the individual meets only four of the nine criteria listed in the DSM-IV-TR for Borderline Personality Disorder.[18] Specifically, he determined that

[18] The DSM-IV-TR criteria for Borderline Personality Disorder are the following: A pervasive pattern of instability of interpersonal relationships, self image and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

1. frantic efforts to avoid real or imagined abandonment.
2. A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation.
3. identity disturbance: markedly and persistently unstable self-image or sense of self.
4. impulsivity in at least two areas that are potentially self-damaging (e.g. spending, sex, substance abuse, reckless driving, binge eating).
5. recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior. (continued on next page)
6. affective instability due to a marked reactivity of mood (e.g. intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).
7. Chronic feelings of emptiness.

the individual met Criteria 2, 4, 6 and 8 listed in footnote 18 below. More importantly, the DOE consultant-psychiatrist opined that the symptoms in Criteria 2, 4, 6, and 8 have caused a significant clinical problem that is severe and persistent. He then pointed to the Introduction section of the DSM-IV-TR which states as follows: "the exercise of clinical judgment may justify giving a certain diagnosis to an individual even though the clinical presentation falls just short of meeting the full criteria for the diagnosis as long as the symptoms that are present are persistent and severe." In DOE consultant-psychiatrist #2's opinion, based on the severity and persistency of the individual's symptoms, it is his clinical judgment that the individual can be properly categorized under the DSM-IV-TR as suffering from Borderline Personality Disorder.

In his Psychiatric Report, the DOE consultant-psychiatrist convincingly explained why he determined that the individual fit four of the nine criteria for Borderline Personality Disorder. Regarding Criterion 2, DOE consultant-psychiatrist #2 pointed to her unstable and intense relations with males in her life. For Criterion 4, he highlighted, among other things, her impulsivity in choosing inappropriate relationships and her impulsive violence. As for Criterion 6, he cited the individual's overreaction to normal stimulus such as a fight with your boyfriend or with another person where someone requires hospitalization. Finally, on Criterion 8 he cited inappropriate intense anger as demonstrated by the numerous altercations chronicled in the Notification Letter.

At the hearing, DOE consultant-psychiatrist #2 testified that it is unusual for him to diagnose someone with a personality disorder because it is "hard to back up with empirical data." Tr. at 30. He added that Borderline Personality Disorder is a complicated diagnosis. *Id.* Furthermore, he testified that in a clinical setting it is not unusual for persons treating patients with borderline personality disorder to have dramatically different opinions about the patient." *Id.* at 43.

Under cross examination, DOE consultant-psychiatrist #2 recognized that the individual has many good qualities such as being a good mother and caring for a disabled child. *Id.* at 80-83. He pointed out that all of the individual's good qualities do not negate the diagnosis at hand. *Id.* at 85.

2. Psychologist #1's View

Psychologist #1 evaluated the individual in 1999 and found at that time that she suffered from an Impulse Control Disorder Not Otherwise Specified (NOS) in the DSM-IV-TR. Ex. D. She also found that the individual had features of a histrionic personality disorder. In her 1999 report, Psychologist #1 determined that the individual appeared to have "matured and mellowed considerably" since her problems as a teenager. *Id.* at 5. At the 1999 administrative review hearing, Psychologist #1 explained that she provided the diagnosis of Impulse Control Disorder because there had been three incidents where the individual lost control of her temper and became involved in a physical altercation with some people. Ex. 51 at 118. She further testified

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8. Inappropriate, intense anger or difficulty controlling anger (e.g. frequent displays of tempter, constant anger, recurrent physical fights).
9. transient, stress-related paranoid ideation or severe dissociative symptoms.

that she "had outgrown" the diagnosis because there had not been any incidents for three years. *Id.* at 135-136.

In November 2005, Psychologist #1 evaluated the individual for a second time. Ex. C. She also administered the Personality Assessment Inventory (PAI) at that time and found that the results of the PAI did not indicate any "psychopathology." *Id.* In her 2006 report, Psychologist #1 disagreed that the individual suffers from Borderline Personality Disorder. *Id.* She first questioned how DOE consultant-psychiatrist #2 could reach such a diagnosis when he determined that the individual only met four, not five of the DSM-IV-TR criteria. *Id.* She then stated her opinion that the individual only meets two the DSM-IV-TR criteria for Borderline Personality Disorder. *Id.* In Psychologist #1's opinion, the individual has a "Partner Relational Problem" which she states is not a mental disorder. *Id.* She concluded her report by stating that the individual has no plans to re-connect with [Boyfriend #2]. *Id.*

At the hearing, Psychologist #1 testified by telephone. She stated that she did not give the individual a diagnosis of Impulse Control Disorder NOS because she believes that the individual has settled down and matured. Tr. at 121-122. She testified that she does not believe that the incident in 2004 rises to the level of impulsivity because there are conflicting versions of the circumstances that led up to the event and there was no independent finding of those facts. *Id.* at 125. She admitted under cross-examination that it would have been useful to her to have access to the police reports of the various incidents in which the individual was involved as well as the individual's personnel security file. *Id.* at 132, 137. Psychologist #1 also admitted at the hearing that in 1999 she was confident that the individual would not be involved in another episode of "discontrol." *Id.* at 137. She testified that she is less confident about that fact in 2006. *Id.* at 137. Finally, Psychologist #1 opined that the individual's recent pregnancy with Boyfriend #2 "complicates things considerably." *Id.* at 133. She opined that it "shows a pattern that this guy is coming in and out of her life." *Id.* Finally, Psychologist #1 concluded by stating that she believes someone must have problems in "love and work" when someone has a borderline personality disorder. *Id.* at 140. She testified that she has no information that the individual has failed to perform her work responsibilities. *Id.* at 141.

3. The Individual's Psychiatrist's Opinion

The individual's psychiatrist evaluated her in November and December 2005 at the request of her attorney. Ex. N at 2. After his evaluations, the individual's psychiatrist concluded that the individual did not suffer from any mental illness or condition. *Id.* In his report, the individual's psychiatrist first analyzes the personality traits of the individual's parents and grandparents to arrive at a profile for the individual. He then notes that the individual scored within normal limits on previous MMPI tests. While he mentions in his report that the individual has had significant conflicts in her two major long-term relationships, he points to her mothering skills and her ability to do her work well as positive factors in her favor. *Id.*

At the hearing, the individual's psychiatrist testified that Borderline Personality Disorder is not well understood; it is a "mushy" diagnosis. Tr. at 155. He stated that Borderline Personality Disorder is considered a relatively untreatable condition because there is no medicine for the condition and psychotherapy is difficult. *Id.* The individual's psychiatrist believes that five of the nine DSM-IV-TR criteria should be met before one should be able to diagnosis a person with Borderline Personality Disorder in a forensic setting. *Id.* at 160. In any event, the

individual's psychiatrist does not believe that the individual met any of the diagnostic criteria for Borderline Personality Disorder. As for those criteria that DOE consultant-psychiatrist #2 rated as positive, the individual's psychiatrists shared his views to the contrary. Specifically, regarding Criterion 2, the individual's psychiatrist claims that while there may be a pattern of unstable and intense interpersonal relationships, they are not characterized by alternating extremes of idealization and devaluation. As for Criterion 4, he sees no evidence of impulsivity in at least two areas of the individual's life that are self-damaging. With respect to Criterion 6, he believes that there must be "really intense emotional relationships" to fulfill this criterion. As for Criterion 8, he is uncertain whether the intense anger that the individual has displayed in the past should be characterized as "inappropriate" for purposes of this criterion.

The individual's psychiatrist admitted that he was not privy to the investigative reports where witnesses gave accounts that differed from the individual's version of events that resulted in the arrests at issue here. *Id.* at 181. He also admitted that he relied to a certain extent on what the individual told him in formulating his opinion of her situation. *Id.* at 187. When asked if he agreed that the individual was involved in numerous incidences of violence, he responded, "it doesn't compare with what I'm seeing in my practice." *Id.* at 188. When queried if he asked her if there were other incidents that were not reported to the police, he testified that he believed there were more arguments between Boyfriend #2 and the individual but that the arguments were not physically violent. *Id.* at 189. The individual's psychiatrist opined that the conflict between Boyfriend #2 and the individual intensified when Boyfriend #2 started viewing their relationship as a "couple relationship" instead of a "parent relationship." *Id.* at 197. He believes that it is essential to look at the individual's work and family to ascertain how they are functioning in evaluating her situation. *Id.* at 156. He concluded his testimony by stating that the individual "only gets violent at home with eccentric or difficult persons." *Id.* at 203.

4. Hearing Officer Determination

As an initial matter, I find that it was appropriate for an experienced, board-certified psychiatrist such as DOE consultant-psychiatrist #2 to diagnose the individual as suffering from Borderline Personality Disorder even though she only met four instead of five of the nine criteria enumerated in the DSM-IV-TR. The introductory section of the DSM-IV-TR clearly states that a person with appropriate training and experience can exercise his or clinical judgment to provide a diagnosis for a person even though the clinical presentation falls just short of the full criteria for the diagnosis. This situation, according to the DSM-IV-TR, is permissible as long as the person's symptoms that are present are persistent and severe. In this case, the evidence supports DOE consultant-psychiatrist #2's opinion that the individual's symptoms are persistent and severe.

As for the four criteria that DOE consultant-psychiatrist #2 relied on to establish his diagnosis in this case, it is my common sense judgment that the criteria were properly invoked. Regarding Criterion 2, the evidence is clear that the individual currently has, and has had, a pattern of unstable and intense interpersonal relationships in her lifetime. The intense, unstable relationships that are documented in the record are the following: her parents in her adolescence, and Boyfriends #1 and #2 in her adult years. As for the individual's psychiatrist's argument that there is no evidence that these relationships alternated between extremes of idealization and devaluation, I respectfully disagree. Based on the record before me, there is evidence that the individual paints Boyfriend #2 in extremely good terms (e.g., Tr. at 279: Boyfriend # 2 is a

great father, he has great parenting skills, he's always there if I needed him, Child #3 adores him) and extremely bad terms (*e.g. id*. at 323: "He was vindictive and made an allegation against me"; Ex. 48 at 53, "he's like a monster that you can't control"). In addition, I noted that the individual told DOE consultant-psychiatrist #2 that her father abused her mother and her mother abused her, yet she described her family as "loving and close-knit" during a 1998 PSI. Finally, I noted that Psychologist #1 also agreed at the 2006 administrative review hearing that the individual fit Criterion 2 for Borderline Personality Disorder. With respect to Criterion 4, the record supports a finding that the individual exhibited impulsivity in choosing her male relationships and in resuming her relationship with Boyfriend #2. The record also supports a finding that she exhibited impulsivity in some of the physical confrontations with others (*e.g*. the 1996 violent assault on a woman,[19] the 1996 physical confrontation with Boyfriend #2 where he allegedly suffered a concussion, the 1996 incident involving the motor vehicle). In addition, one could perceive the individual's decision to bear another child by Boyfriend #2 in June 2005 as an impulsive act.[20] The individual had a restraining order in effect against the individual until June 14, 2005 that prohibited him from "all forms of contact," and had sought to have that restraining order extended only one month prior to its expiration. It is simply not plausible, as suggested by the individual, that she and Boyfriend #2 reflected for any period of time about having another child together. All of the individual's impulsive actions are self-damaging because they either caused her to be arrested or jeopardized her career. It seems reasonable to me that the individual met Criterion 6 due to her overreaction to normal stimuli, such as breaking someone's jaw and nose in an attempt to "resolve" a long-standing dispute, and kicking someone in the head as many as 20 times to ensure that he left her vehicle. Finally, the evidence supports a positive finding on Criterion 8, *i.e*., inappropriate intense anger or difficulty controlling anger.[21] This finding is bolstered by Psychologist #1's view that the individual's behavior would come within the ambit of Criterion 8.

In reaching my finding that DOE consultant-psychiatrist #2 properly diagnosed the individual as suffering from Borderline Personality Disorder, I carefully considered the differing opinions of Psychologist #1 and the individual's psychiatrist about the state of the individual's mental health. In short, I determined that neither presented persuasive testimony to convince me that their point of view was more compelling than that of DOE consultant-psychiatrist #2.

As I evaluated the disparate views of the individual's two experts in this case I made the following observations. First, Psychologist #1 provided a predictive assessment at the 1999 administrative review hearing regarding the individual that proved to be erroneous. Second, some of the facts relied on, or inferences drawn by, Psychologist #1 in her 2006 Report seemed erroneous or questionable. Specifically, Psychologist #1 stated in her 2006 Report that that "[the

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[19] The individual did not convince me that she was not the perpetrator of that incident. In fact, it is noteworthy that the individual provided three differing versions of the incident (1998 PSI, 1999 administrative review hearing and 2004 PSI) to the DOE, in which she portrayed herself more favorably in each successive version. Moreover, the OPM report contains the testimonies of the victim and another who state that the individual was the aggressor in the incident.

[20] My observation in this regard should not be construed as a criticism of the individual's fundamental right to procreate.

[21] In making this determination, I considered the individual's contention that she was a battered woman. In my opinion, the record is unclear on this matter. Of course, I would agree that the individual was probably the victim in those incidents where her "significant other" was arrested and charged with domestic assault and/or battery. However, in those incidents where the individual was arrested and charged with a domestic offense but Boyfriend #2 refused to cooperate with the police, I do not equate dismissal of a charge to an acquittal.

individual] has filed a restraining order against [Boyfriend #2] and has no plans to re-connect with him." Ex. C at 2. However, there is no documentary or testimonial evidence in the record that the individual filed for a restraining order against Boyfriend #2 after the judge denied her request in May 2005 for a continuation of the restraining order. Moreover, it is difficult for me to understand why Psychologist #1 would believe that the individual had no plans to re-connect with Boyfriend #2 when Boyfriend #2 has visitation rights to Child #3 and the individual is pregnant with another child by Boyfriend #2 and plans to "co-parent" Child #4 with Boyfriend #2. Furthermore, it was clear to me that Psychologist #1's lack of access to the individual's personnel security file and the investigative reports of the various incidents before me prevented Psychologist #1 from understanding or appreciating the totality of the facts in this case. Ultimately, I found Psychologist #1's opinion in this case to be unconvincing.

As for the individual's psychiatrist, I found some of his testimony to be troubling. It appeared to me that the psychiatrist was ignoring or justifying the individual's problematic behavior to reach a non-diagnosis in this case. When the individual's psychiatrist was asked if he agreed that the individual was involved in numerous incidents of violence, he did not respond positively but rather stated that the individual's behavior doesn't compare with what he sees in his practice. Tr. at 187-188. As for the individual's volatile relationship with Boyfriend #2, the individual's psychiatrist seemed to ascribe the blame for that volatility to Boyfriend #2's "autistic features." Ex. B at 3. Under questioning by me, the psychiatrist admitted that he has never examined Boyfriend #2 and was just forming a hypothesis that Boyfriend #2 possesses these features. Tr. at 192. The psychiatrist also suggested in his testimony that in the individual's culture physical confrontations with others both inside and outside the family are the norm. *Id.* at 158. He tried to excuse the individual's conduct by stating that she "only gets violent at home with eccentric or difficult persons." Tr. at 203. Getting violent at home under any circumstances is, in my opinion, not acceptable behavior. Moreover, the record indicates that the individual has also been violent outside the home, *e.g.* when she broke a woman's nose and jaw.

After deciding that neither of the individual's experts provided compelling evidence or testimony to convince me that DOE consultant-psychiatrist #2 is incorrect in his diagnosis of the individual, I next considered that the individual appears to be a good mother who cares for all three of her children, one of whom is disabled. While this factor is positive, it is one that DOE consultant-psychiatrist #2 determined did not negate his diagnosis. Therefore, in my overall assessment of Criterion H in this case, I only accord neutral weight to the considerable evidence in the record that the individual functions laudably as a single mother under difficult circumstances.

Once I had concluded that the evidence supports a finding that that the individual suffers from Borderline Personality Disorder, I next determined that the individual's mental illness has caused, and may cause a significant defect in her judgment and reliability. The evidence in the record shows that the individual has manifested significant lapses in her judgment when she caused physical harm to people (a fractured jaw, broken nose, concussion) and returned to her dysfunctional relationship with Boyfriend #2 on several occasions. DOE consultant-psychiatrist #2 convinced me that it is likely that the individual may again show a significant defect in her judgment and reliability if she does not have "some treatment or get a better understanding of what's happening and why it's happening." Tr. at 50.

In the end, it is my common sense judgment that the individual has not brought forth sufficient evidence to mitigate the LSO's security concerns under Criterion H. I turn now to the LSO's allegations under Criterion L.

B. Criterion L

1. Arrests, Encounters with Law Enforcement and Violent Incidents

The LSO's first matters of concern under Criterion L are the individual's documented history of arrests, contacts with law enforcement, and violent behavior. With the exception of the assault and battery in 1996 on a woman that resulted in the woman suffering a fractured jaw and broken nose, all the other incidents of alleged violent behavior and arrests involve the individual's boyfriends. It is the individual's contention that for most, if not all of these incidents, she was the victim of domestic violence and not the perpetrator of the assaults.

This matter is difficult to resolve because I do not have the benefit of both parties' testimony regarding the incidents under review. If the individual's version of events is true, then I would conclude that she was acting in self defense and should not be held responsible for the events that occurred with her boyfriends. However, regarding the incident in 1996 when Boyfriend #2 allegedly sustained a concussion after being kicked in the head numerous times, the evidence suggests to me that the individual's violent reaction was excessive and beyond what one would expect in a case of self defense. With respect to the 1996 felony battery charge stemming from the individual's use of a motor vehicle to hit Boyfriend #2, I was not convinced that Boyfriend #2 fabricated the incident. As for the recent incident in 2004, the individual did not convince me that Boyfriend #2 injured himself before he called the police.

Regarding the incident in 1996 when the individual inflicted serious bodily injury on a woman, this incident demonstrates how the individual allowed her anger to escalate to an uncontrollable, unacceptable level. As indicated in footnote 19, the record shows that the individual has provided different versions of what transpired on this occasion, each time portraying herself in a more favorable light. It is my determination that the individual was the perpetrator of this assault. [22]

In the end, I determined that the individual exhibited aggressive behavior on four occasions, three of which resulted in her arrest. The individual failed to convince me that these kinds of incidents will not occur again. Given that Boyfriend #2 will most likely remain a part of the individual's life, it is likely that these kinds of incidents will occur in the future.[23] For this

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[22] It is irrelevant from my perspective that the woman withdrew charges in the case after the individual apologized to her. The ultimate disposition of the case does not negate the severity of the individual's actions.

[23] In making this finding, I rejected the individual's argument that she set effective boundaries with Boyfriend #2 between 1997 and 2004 to minimize these kinds of incidents during that period and would do so in the future. The Personnel Security Specialist testified that during the 2005 PSI, the individual recounted two other instances prior to June 2004 when she and Boyfriend #2 were involved in arguments that turned physical. This additional information, when viewed together with the derogatory information in the record, solidified my view that there is a likelihood that more of these kinds of incidents will occur in the future.

I also considered that the individual had attended two or three counseling sessions with Boyfriend #2. Ex. F (shows two sessions), Tr. at 302 (individual's testimony that she attended three sessions). I decided that two or three counseling sessions are simply too few for me to conclude that the individual has overcome the serious, long-term problems that appear to exist in her relationship with Boyfriend #2. Also, I was not convinced by her conflicting testimony (Tr. at 303 and 310) that she is committed to continuing with her counseling sessions.

reason, I cannot find that the individual has mitigated the Criterion L concerns associated with the three arrests and her aggressive behavior tied to the 1996 incident with her boyfriend.

As for the five instances when the police were called to the individual's residence or to another location to investigate complaints of domestic disturbances, the record suggests that the individual placed these calls to police. It appears likely to me that the individual was the victim in each of these five encounters with law enforcement rather than the perpetrator. Under these circumstances, I do not find this conduct to be "unusual" for purposes of Criterion L, nor do I find that the conduct calls the individual's judgment, reliability or trustworthiness into question.

2. Breach of Trust and Susceptibility to Blackmail, Coercion and Duress

The individual's decision to resume a relationship with Boyfriend #2, a man who she claims has been verbally, emotionally, and physically abusive towards her is extremely problematic from a security perspective for two reasons. First, she told the DOE at her first administrative review hearing in 1999 that she would avoid a relationship with Boyfriend #2 in the future and did not do so. Second, the individual has admitted that Boyfriend #2 manipulates and controls her, thereby making her susceptible to pressure, coercion, exploitation or duress at his hands.

Regarding the individual's sworn statements at the 1999 administrative review hearing, the individual testified that at the time she made the statements it was "her intent to be done" with Boyfriend #2. Ex. 318. She further testified that she could not anticipate that her son would get sick and that she would need help with childcare. *Id.* The individual also testified that she set boundaries with Boyfriend #2 in 1997 and has done so again. I found the individual's arguments to be unconvincing and determined that the individual misled the DOE in 1999 about her intentions regarding Boyfriend #2.

The record indicates that Boyfriend #2 began coming to the individual's home two days each week beginning in 2000 to assist with childcare. Tr. at 362. This was not long after the DOE granted her a security clearance based in part on the individual's sworn assurance that she would avoid contact with Boyfriend #2. Had the individual been sincere about her commitment to avoid contact with Boyfriend #2, she would have made other childcare arrangements for her child. While contact with Boyfriend #2 might have been unavoidable when Child #3 became ill in March 2004, the individual's resumption of an intimate relationship with Boyfriend #2 was an election that she made with total disregard for her prior sworn testimony. I found the individual's arguments about "setting boundaries" and limited contact with Boyfriend #2 to be incredulous because the individual became pregnant by Boyfriend #2 on two occasions after her testimony in the 1999 administrative review hearing. To the extent the individual believes she can establish some distance between herself and Boyfriend #2, I find that scenario unlikely. It is foreseeable that Boyfriend #2 will wish to be more involved, not less involved, in the individual's life after her baby is born.[24] It seems likely to me that there will be renewed

[24] One of the individual's co-workers testified that the individual stays with Boyfriend #2 because she loves him and wants to be a family with him. Tr. at 257. The individual also testified that she would like to be a family with Boyfriend #2. *Id.* at 309. These statements about the individual's desire to be a "family" with Boyfriend #2 contributed to my conclusion that the individual will probably not distance herself from Boyfriend #2 in the future.

turbulence in the individual's domestic life and perhaps more incidents of domestic unrest and even violence.

Moreover, to the extent Boyfriend #2 remains a part of the individual's life, there is an unacceptable risk that she might be susceptible to blackmail, coercion, or duress from Boyfriend #2. By the individual's own account, Boyfriend #2 is financially unstable, a fact that raises a concern that Boyfriend #2 might resort to blackmailing the individual. Tr. at 294. At the hearing, a Personnel Security Specialist cited numerous passages from the 1998 PSI and the 2004 PSI which indicated to her that the individual could be susceptible to coercion, or duress. Tr. at 216 (passages appearing in Ex. 49 at 61-62, 101); *id.* at 259 (passages appearing in Ex. 48 at 21, 31, 32, 34, 35, 44-45, 46, 49, 50, 51, 52, 53, 58, 60, 62, 80, 116, 117, 120, 131, 135, 136, 139). Each of the passages contains statements made by the individual about Boyfriend #2 to the Personnel Security Specialist that raises the specter of blackmail, coercion or duress. One of the most telling examples of potential coercion is set forth below:

> I had to totally kiss butt, I mean, using that term, I really did. I had to kiss butt, I had to s - -do anything he wanted, whenever I wanted, however he wanted. When he said frog, I had to jump, if I didn't he was like, I'm gonna screw you in court, bitch . . . I just had to sit there and abide by anything he wanted me to or he was gonna go in and tell'em, you know, that yeah, she did do it . . . And I was like, okay, you know, I have to do what he wants.

Ex. 49 at 61.

At the hearing, the individual denied that Boyfriend #2 manipulated her, claiming instead that he tried to manipulate her. I found then individual's semantics to be unconvincing. The individual made numerous statements to two different personnel security specialists on two occasions seven years apart about Boyfriend #2's controlling, manipulative nature.[25] The excerpt reproduced above from 1998 PSI makes it clear that Boyfriend #2 has coerced the individual in the past to do whatever he wanted. The individual has failed to provide any credible evidence to suggest that Boyfriend #2 will not continue to exercise his control over her in the future to manipulate her into doing things that she does not want to do. The risk, of course, is that Boyfriend #2 will coerce the individual into doing something that is inimical to national security. As the DOE Counsel stated in his Closing Statement, this "is a risk that the Department cannot take." Closing Statement at 8.

In my overall consideration of the Criterion L charges before me, I accorded only neutral weight to the testimony of the individual's co-workers and supervisor who collectively related that the individual is a reliable, trustworthy worker. While the substance of their testimony is positive, it is simply not sufficient by itself to overcome the compelling security concerns associated with Criterion L that are before me.

After careful consideration of all the testimonial and documentary evidence, I find that the individual has not mitigated the security concerns associated with Criterion L.

[25] One of the individual's co-workers who observed Boyfriend #2 testified that Boyfriend #2 wants to "control and manipulate [the individual's] life for his benefit." Tr. at 257.

VIII. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the DOE. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: August 3, 2006